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MAKING REVERSIONERS PARTIES TO MORTGAGE SUITS AGAINST HINDU WIDOWS.

(*Continued from p. 35*)

The reasoning in *Ramachandra* v. *Kalku* [1] does not carry one far. The suit was for redemption by a presumptive reversioner and most of the considerations referred to in the judgment relate to what the learned judges call 'the difficulty of carrying out a decree for redemption in a case of the kind'. These seem to us by no means serious. For instance, they ask, how is the reversioner to be put into possession on redemption when the widow is still alive? The obvious answer is, he is put into possession *not as reversioner* but only as a person who has redeemed. The same question may be asked and the same answer given in respect of every one of the several classes of persons specified in clauses (*b*) to (*g*) S. 91 of the Transfer of Property Act. Again, they point out that on failure to redeem the law works a foreclosure and ask how is this to be applied to a reversioner "who may ultimately never become entitled to the property'? Here again, the answer is given by the question, how is the rule to be applied to a surety or to an attaching creditor (cl. (*c*) and (*f*)) for in their case also the necessity may never arise for them to proceed against the mortgagor's interest in the property. And likewise, the result of a suit brought by any one of the kinds of persons specified in the several clauses of S. 91 will not be binding against the other classes of persons. The one substantial argument in the judgment is that a reversioner's 'interest' is not such as can be held to fall within Sec. 91 clause (a). Though it may not be accurate to confine Sec. 91 (a), as the learned Judges do, to 'present interests' (as contrasted from 'contingent rights'), it must be taken that the clause applies only to such persons as can be said to have a legal interest in the property and not to all who may be said to be 'interested' in the property in the popular sense. (Cf. *Roshan Singh* v. *Balwant* [2] where the Judicial Committee incline to the

1. (1908) I. L. R. 30 A. 497.

2. (1899) I. L. R. 22 A. at p. 199.

view that a right to maintenance out of but not charged on the property will not be within the clause). But it does not follow from this that a reversioner cannot be considered to fall within S. 85. Justice Sundara Ayyar points out that the word 'interest' should receive the same interpretation in both the sections. There is at least one obvious reason against this. The result of such a construction will be to exclude from the scope of S. 85 the several classes of persons specified in clauses (*b*) to (*g*) of S. 91, for it would be hardly reasonable to contend that they also fall within clause (*a*) of the section; but the exclusion of those persons from mortgage suits will be inconsistent with well established English practice. It must therefore be allowed that the description of parties in S. 85 cannot be confined to those falling within clause (*a*) of S. 91. It must also be remembered that there is a fundamental difference between the scope and object of S. 85 and that of S. 91. The latter section is necessarily limited and definite because it *confers a right to relief* and it is only reasonable that a person coming forward as plaintiff should be called upon to show a specific interest or title in himself. S. 85 on the other hand is intended to lay down the well-established rule of practice that a mortgage action should be so constituted as to enable the court to pass a comprehensive decree and avoid multiplicity of suits.

But assuming that a presumptive reversioner is not a 'necessary' party within the meaning of S. 85, it seems to us too much to hold that he is not a 'proper' party at all, in the sense that he cannot be impleaded by the mortgagee if he so chooses or intervene on his own application. Whatever may be said as to S. 85 of the Transfer of Property Act, which saved only S. 437 of the Civil Procedure Code, O. 34 r. 1 of the new Code enacts the rule of joinder, generally 'subject to the provisions of the Code' so as to let in the operation of O. 1 r. 10 (2). The fact that even without the presence of the presumptive reversioner, the suit can be disposed of as between the widow and the mortgagee does not necessarily show that the joinder of the presumptive reversioner is not warranted by this rule. It cannot be rightly said that the question of the operativeness of the mortgage as against the estate is not involved in a suit wherein the mortgagee seeks to bring the whole property and not merely the limited interest of the widow to sale. Whether the joinder of the presumptive reversioner will (within the meaning of O. 1 r. 10 (2)) enable the

Court, effectually and completely to adjudicate upon and settle the matter will depend upon the answer to the other two questions indicated at the outset of this article.

It is however desirable to point out here that the bringing in of the reversioner or the raising of an issue as to the binding character of the mortgage will not violate the rule against joining persons claiming by 'title paramount' as against the mortgagor. It may in a sense be true that the reversioner does not claim 'through' the widow, but the decree obtained against the widow can in certain circumstances effectually bind him. The omission of the widow to pay up the decree amount may (if the debt was a proper one) lead to the extinction of the reversioner's rights on the execution sale taking place. The reversioner's position is in this respect more analogous to that of a remainder-man (with regard to a mortgage made by the prior full owner) or that of a son in a Mitakshara joint family (with regard to a mortgage of family property made by the father); the difference arising from the absence of a 'vested interest in the reversioner is immaterial for this purpose. Just as the Hindu son is made a party to the mortgagee's suit against the father, so as to give the son an opportunity of disproving the binding character of the debt, it is eminently desirable to allow the question of the binding character of the mortgage by the widow to be settled in the mortgage suit itself instead of being postponed to a later litigation. In *Indar Kuar* v. *Lalta Prasad* [1] the daughter was during the mother's lifetime allowed, in the mortgage suit itself, to plead and prove that only the mother's limited interest could be sold on foot of the mortgage, as the debt had not been borrowed for a purpose binding on the estate.

We may now proceed to the next question. Suppose the presumptive reversioner is impleaded in the mortgagee's suit, is he *bound* to plead on the question of the binding character of the widow's mortgage. It is submitted that on the principle laid down in cases like *Sri Gopal* v. *Prithi Singh* [2] he is bound to do so, on pain of being precluded from ever afterwards raising the question himself when he becomes the actual reversioner. The doubt suggested as to this in *Bhagirathi Das's Case* [3] seems to us, with all respect, unfounded. The following passage in Jones on

1. (1882) I. L. R. 4 A 532. 2. (1902) I. L. R. 24 A. 429 (P. C.)
3. (1913) I. L. R. 41 C. 69.

Mortgages (S. 1439) is apposite in this connection:—" Where the complainant states such facts as will if admitted subject the defendant's title to the plaintiff's mortgage and to the relief sought, the defendant may be estopped from afterwards setting up his interest as against the judgment in the foreclosure action. The judgment rendered is conclusive between the same parties and their privies, upon all matters embraced within the issue in the action, whether the issue was joined by the defendant or left unanswered. Thus, in a suit upon a mortgage made by a life tenant but purporting to convey the fee certain contingent remaindermen were made parties, the complainant alleging that their interest was inferior to the mortgage, and a decree was rendered against them by default. It was held that the decree barred their interest and gave the purchaser at the foreclosure sale a good title." The decision in *Kanai Lall Khan* v. *Sashi Bhusan Biswas* [1], is distinguishable on the ground that in that case the reversioner was brought into the mortgagee's suit only as 'legal representative' of the widow, on her death pending suit and the Court accordingly refused to allow him to raise the question of 'necessity,' which was a new plea not open to the widow herself.

If the reversioner pleads and the question of necessity is decided, one way or the other, there can be no doubt that the question cannot afterwards be raised once again, if he himself becomes the actual reversioner. (Cf. S. 43 of the Specific Relief Act) see also *Beardsley* v. *Beardsley* [2]. The rule of *res judicata* would be the same whether the presumptive reversioner figured as plaintiff in the former suit or as defendant. But if some one else turns out to be the 'actual' reversioner after the widow's death, the question of the effect of the presumptive reversioner's omission to plead in the mortgagee's suit or of the operation of the adjudication on the question of necessity in that suit, presents some difficulty. It seems however clear that even in respect of this question there is no reason for making any distinction between cases in which the presumptive reversioner has come forward as a plaintiff and those in which he has been impleaded as a defendant. He may be fairly deemed to fill a representative capacity Cf. *Venkatanarayana Pillai* v. *Subbammal* [3] as much in the one case as in the other; and if the decision of the Judicial Commitee in the last cited case is to

1. (1881) I. L. R. 6 C. 777. 2. (1899) L. R. I. Q. B. 746.
3. (1915) I. L. R. 38 M. 406 (P. C.)

be interpreted as giving support to the application of the rule of *res jud'cata* in favour of the 'actual' reversioner (though he was not the plaintiff in the former suit), the rule will equally apply *against* the reversioner in similar circumstances, at least in cases in which the adjudication was obtained *after fair contest.* But we do not think that even this construction of that decision will justify the extension of the rule of 'constructive *res judicata*', as laid down in *Sri Gopal* v. *Prithi Singh* 1 to such cases, so as to bind the actual reversioner by the *default* or *omission* of the presumptive reversioner impleaded in the former suit.

SUMMARY OF ENGLISH CASES.

In re **Mariette. Mariette** *v.* **Governing Body of Aldenham School,** (1915) 2 Ch. 284.

Charity—Bequest to governors of a school for building Fives courts in the school—Bequest for prizes in athletics—Statute of Elizabeth 43 Eliz. C. 4.

A testator bequeathed to the Governor of a school a sum of £ 1,000 for building Fives courts or squash racket courts or for some similar purpose to be determined upon by the Governors. He also bequeathed a sum of £ 100 to the headmaster of the school for the time being, so that the interest on the sum might be used for giving prizes in athletics. The school was founded as a free grammer school and was a charity within the statute of Elizabeth. *Held,* that both the legacies were valid charitable bequests, it being essential in a school of learning that there should be organised games as part of the daily routine.

In re **Croxton. Ferrers** v. **Croxton,** (1915) 2 Ch. 291.

Will—Annuity—Charge on Realty and Personality—Insufficiency of income—Deficiency paid out of corpus—Recoupment —Tenant for life and remainder man, liability of.

A testator bequeathed annuities charged upon the income and corpus of his residuary estate. The whole of the estate was settled in strict settlement upon his son and grandson. The income was insufficient to keep down the annuities. About £52 had been paid out of the capital, to satisfy an annuitant who had died in 1911 and also the surviving annuitants. It was

1. (1902) I. L. R. 24 A 429.

expected that there would be surplus income in the hands of the tenant for life after satisfying the annuities.

Held, the tenant for life could not be called upon to replace the deficiency raised out of the capital, having regard to the fact that the annuities were charged upon the capital as well as income. *Prince* v. *Cooper* 1 followed.

In re **Stoodley Hooson** *v.* **Locock**, (1915) 2 Ch. 295.

Will—Construction—Codicil, effect of—Residuary bequest in will—Bequest in codicil of "the residue of my estate not bequeathed by the will"—Effect of.

A clear and unambiguous gift in a will can be revoked by codicil only by words equally clear and unambiguous as those of the original gift.

Hearle v. *Hicks* 2.

A testator by his will made certain specific bequests and devised certain lands for charitable purposes, and thereafter devised and bequethed all his real and personal estate, not disposed of, to his trustees to hold in trust for certain religious and charitable purposes. Later on, the testator made a codicil in which after referring to his will, continued, "The residue of my estate not bequeathed by the above will I give and bequeath to Mabel... absolutely, and I appoint her sole executrix of this codicil." The testator died soon after. *Held*, that what passed under the bequest in the codicil was such portion (if any) of the residue as might ultimately turn out not to have been effectually disposed of by the will and no more.

In re **Cadbury Brothers' Application**, (1915) 2 Ch. 307.

Trade mark—Label—Registration—Name of a distinctive character—Disclaimer—Trade Marks Act, 1905 (5 Edn. 7 c. 15) Ss. 3, 9 and 15.

An application was made by Cadbury Brothers, Ltd., to the registrar of trade marks, to register as a trade-mark a label consisting of a wreath or border of five Tudor roses enclosing the words "Tudor chocolates made by Cadbury," the word "Tudor," being in the most prominent type. There was evidence to show that for 12 or 13 years, the word 'Tudor' had been distinctively used with reference to the goods of the applicants. The registrar in accordance with a recent practice refused to register except on

1. (1853) 17 Beav. 187. 2. (1832) 1 Cl. and F. 20, foll.

the condition of the applicants disclaiming any right to the exclusive use of the word "Tudor."

Held, that the registrar was wrong in acting on a supposed rule of practice and the registration in the present case ought to proceed without insisting on any disclaimer.

The discretion conferred on the registrar or the Court by S. 15 of the Trade Marks Act, 1905, to a require a disclaimer of any right to the exclusive use of any part or parts of a trade-mark should not be exercised so as to place upon the register disclaimers which are unnecessary in law.

In re **Ruben**, (1915) 2 Ch. 313.

Alien Enemy—Life assurance policy—Deposit with enemy as security—Policies out of jurisdiction—Enemy property—Application to vest policies in custodian—Trading with the Enemy Amendment Act (1914), (5 Geo. 5 C. 12) S. 4 (1).

An English firm of two partners had deposited with one Ruben, an alien enemy resident in Germany certain policies of assurance on the respective lives of the partners, as security for certain bills which Ruben had accepted on behalf of the firm. The firm became bankrupt later on. One of the partners died and the policy became payable. The trustee in the bankruptcy applied, under S. 4 of the Trading with the Enemy Amendment Act, 1914, for an order vesting in the custodian, the two policies or in the alternative, the right to receive the moneys thereunder. *Held*, that the only property which could be vested in the custodian under the Act, was enemy property. The charge on the policy was enemy property, but the applicant was not interested in it. The application was therefore dismissed.

Duncan Fox and Company, *v.* **Schrempet**, (1915) 3 K. B. 355.

Sale of goods C. I. F. contract—Performance of, impossible owing to war and illegal being against proclamation—Effect on rights of parties.

An English firm sold to another firm a quantity of Chilian honey to be delivered at Hamburg in Germany, payment to be made at Liverpool in exchange for shipping documents on presentation. The honey was shipped on board a German steamer and while on high seas, war was declared between England and Germany and the Proclamation against the trading with enemy

was issued. On the same day the bill of lading was tendered to the buyers who refused to accept the same.

Held, that they were entitled to do so as the further performance of the contract by either parties would have involved illegal acts.

Fratelli Sorrentino v. Buerger, (1915) 3 K. B. 367.

Charterparty Shipping—Effect of sale of ship before date fixed for loading.

Certain ship-owners agreed that their ship should proceed to a certain place and there load a complete cargo. Before the ship reached the place, they sold the ship with the benefit of the contract for loading.

Held, that the sale did not excuse the charterer from loading the vessel according to contract and on the finding that the original owners and the purchasers were always willing to perform the contract and did in fact tender the ship for loading at the place.

Held, that the original owners had not put it out of their power to perform the contract.

JOTTINGS AND CUTTINGS.

Professional Ethics.—Ought a lawyer to defend a prisoner whom he believes to be guilty? Mr. Justice Darling in a case in which a solicitor was the plaintiff made some observations on the familiar problem which ought not to be unrecorded. He protested, says the "London Globe" against the notion that a lawyer, whether barrister or solicitor, is under an obligation to cease to conduct a case which he realises to be bad. "If an advocate in the course of a trial for murder comes to recognise that his client is guilty, is he" asked the learned Judge, "to say to the court, "Hang my client?" To lawyers this counter-query with its self-evident response effectually places beyond the realm of argument the original question. They know that when once embarked on a case they cannot retire therefrom without the consent of the client or the court, and to come before the latter with a revelation of facts damaging to the person they have chosen to defend in such a breach of confidence that no lawyer worthy of the name could be found to commit it. Moreover, even if a lawyer were himself willing to commit such perfidy, the law itself, having

regard to the sacredness of the relation subsisting between attorney and client, would from motives of public policy effectually seal his lips. But how about a lawyer accepting a retainer and voluntarily engaging in the defence of an accused person where he has, prior to his retention, direct knowledge of the prisoner's guilt, derived, we will say, from the accused's own confession? Is not such a defence highly unethical and evidence of a professional depravity in the lawyer who will dare to undertake it, the pseudo-moralist asks? And Lord Macaulay in his glittering style inquires, "Can it be right that a man should, with a wig on his head and band round his neck, do for a guinea what, without those appendages, he would think it wicked and infamous to do for an empire?" To this rhetorical question we answer simply, "It can." The public hangman or chief electrocutioner can by virtue of his office and under warrant from the state legally and morally deprive of his life at the appointed time a murderer condemned to die; but let any one before such time seek to accomplish his death by lynch law or otherwise, and it is the duty of the Sheriff or other proper custodian to defend him to the utmost, even to the point of taking life, although the prisoner may be rightly deserving of death. His death, however, the law and good morals say, should be accomplished only by due process of law. The trouble with most detractors of the legal profession is that they fail utterly to comprehend the principle on which advocacy is based. Advocacy implies nothing more than the substitution for an actual litigant of a person professing special skill and learning in litigation to do on behalf of the litigant and in his stead all that he, if possessing sufficient knowledge and ability, might do for himself with fairness to his opponent. Every man, accused of an offence, has a constitutional right to a trial according to law; even if guilty, he ought not to be convicted and undergo punishment unless on legal evidence, and with all the forms which have been devised for the security of life and liberty. As former Chief Justice Sharswood of Pennsylvania has wisely said: "These are the panoply of innocence, when unjustly arraigned; and guilt cannot be deprived of it, without removing it from innocence." To conduct his defence in accordance with the forms of law, a prisoner, no matter how guilty, is entitled to the benefit of counsel and force the latter to act under pain of punishment for contempt if he fails to discharge his duties properly. It can therefore

not be improper or unethical for an attorney to do what the law can oblige him to do, and this principle is embodied in the codes of professional ethics adopted by many states which provide that "an attorney cannot reject [or is not bound to reject] the defence of a person accused of a criminal offence because he knows or believes him guilty. It is his duty by all fair and honourable (or lawful) means to present such defence as the law of the land permits to the end that no one may be deprived of life or liberty, but by due process of law."—*Law Notes.*

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New application of Majority rule:—

"What's the charge"? asked the magistrate.

"He stole my pig, your honour" said the plaintiff.

"Have you any witnesses?" asked the magistrate.

The plaintiff produced three men, who swore that they saw the defendant steal the pig.

"But I have 10 witnesses who didn't see me steal the pig," announced the defendant.

"His honour counted busily."

"That's right," he said when he had compared the number of witnesses on the two sides.

"In this country majority rules," he announced.

"The prisoner is discharged." *Law Students Helper.*

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Humor of the Law.—The secretary of the bar association was very busy and rather cross. The telephone rang.

"Well, what is it?" he snapped.

"Is that the city gas works?" said a woman's soft voice.

"No, madame," roared the secretary, "this is the San Francisco Bar Association."

"Ah," she answered in the sweetest of tones, "I didn't miss it so far, after all did I?"—*Central Law Journal, Vol. 81, No. 13.*

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Matrimony in Jewish Law.—The first article of the Eben Hazer (*i.e.*, the Rock of Salvation) an authoritative code of Jewish Law declares: "Marriage is for man a religious and social obligation; he who does not marry is considered quilty of homicide."

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Death of two retired Judges.—The careers of Sir George Farwell and Sir Thomas Bucknill, which, to the sincere sorrow of the whole profession, have ended within the last few days, were,

in some respects, strangely parallel. Both w[redacted]orn in 1845; both reached the Bench in 1899. Apart fro[redacted] coincidences, however, there was little of resemblance abou[redacted]n. Sir George Farwell was one of the strongest and most l[redacted] judges of our time. His judgments were expressed in virile a[redacted]eful English, and some of them, particularly that he delive[redacted] in the *Taff Vale Case*, were notable contributions to legal history. To his fine judicial temper he joined a rare independence of judgment, which found fitting expression in the protests he made more than once in the Court of Appeal against the encroachments of the executive upon the province of the Courts. Sir Thomas Bucknill was a judge of a different type. Not by any special gift of legal scholarship did he win the high regard in which he was held; it was by the less conspicuous but not less important gifts he displayed as a *nisi prius* judge—his keen sense of fairness, his painstaking industry, and his breeziness of temperament—that he achieved the the wide popularity he enjoyed. There was always something of the country squire about him, but nothing of his narrowness. Everybody will regret that Sir George Farwell and Sir Thomas Bucknill, after a long record of judicial service faithfully given, did not live longer to enjoy the leisure they had so well earned. —*Law Journal, October 9.*

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Macaulay and the Law.—Macaulay, who was a member of the Northern Circuit, had, like so many other members of the Bar who have abandoned the profession to win renown in other spheres a strong dislike for the law, though he overcame it somewhat when he went to India as legal member of the Viceroy's Council. 'Nothing is more characteristic of the man,' writes his biographer, 'than the contrast between his unconquerable aversion to the science of jurisprudence at the time when he was ostensibly preparing himself to be an advocate, and the zest with which, on his voyage to India, he mastered that science in principle and detail as soon as his imagination was fired by the prospect of the responsibilities of a law-giver'. It was while Macaulay was seeking in vain for clients on the Northern Circuit, not long after his call to the Bar in 1826, that he penned the newly discovered Latin verses which have been published in the *Times*. They show how the young barrister, bored by circuit life, turns lovingly to Cambridge. He describes—to quote the translation supplied by the President of Magdalen College, Oxford—how 'the Court's

loud murmu[redacted]s,' and how the 'crowding clients' chatter blares,' but th[redacted]mony and conflicts of forensic life have no attraction for [redacted]

> But[redacted]e Bar's persuasive tone,
> Nor[redacted] of javelin'd satellite,
> Nor judge who stares at shoulders white
> With snowy tresses not their own,

can keep his thoughts from turning to his old Cambridge rooms. Macaulay, indeed, never took seriously to the Bar as a profession. 'After the first year or two of the period during which he called himself a barrister' writes Sir George Trevelyan, 'he gave up even the pretence of reading law, and spent many more hours under the gallery of the House of Commons than in all Courts together. Probably, if Macaulay had chosen to apply himself more diligently and patiently to the profession he might have won a great name in it. 'It was not hard,' he writes of Bacon, 'for a man of his powers to acquire that very moderate portion of technical knowledge which, when joined to quickness, tact, wit, ingenuity, eloquence, and knowledge of the world, is sufficient to raise an advocate to the highest professional eminence.' Possibly a personal note may be detected in the sentence in his famous essay; but the world, including the Bar, has good reason to be glad that the essayist and historian was not lost in the advocate or judge.—*Ibid October 16.*

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Miscellany.—Not long after Sir Thomas Bucknill was made a judge he had before him, at the Derby Assizes, a young girl charged with murdering her infant by throwing it down the shaft of a disused lead mine. She was acquitted of the capital charge, but for concealing the death of the child was sentenced to three months' imprisonment without hard labour. Her sad case appealed to his sympathetic nature, and before leaving Derby he wrote to the girl's father:—'Assize Court, Derby, February 28, 1899. Sir,—I am the judge who sentenced your daughter, Emily Gilbert, on Saturday to three months' imprisonment for the concealment of birth of her recently born child, and I have been to the gaol to-day to see her and talk to her, and I have told her that I am writing to you. She seemed very sorry for the past, and I want you to tell me that when she comes out of prison you and her mother will forgive her and take her back, and try to help her to make a new start. I know how angry you must have felt with her, but

at the time it would be a very great delight to me to know from you that you and her mother will overlook the past, and will not be any longer angry with her, so that she may be encouraged to make a new beginning by your help.—I am, yours faithfully, T. T. Bucknill.' No judge could have written just like that who had not the double gift of sound sense and a kindly heart.—*Ibid.*

A Legal V. C.—The profession will have heard with special sorrow of the death of Lance-Corporal Keywoth. V. C., who was a clerk in the employ of Messrs. Burton, Scorers & White, of Lincoln, when he joined the King's Forces at the beginning of the war. He was awarded the Victoria Cross for his conspicuous bravery at Givenchy in May, and has now died of wounds received in action in France. He is the only soldier associated with the legal profession who has won the V. C., and every lawyer in the country, proud of the distinction he achieved, will sincerely regret the death of so young and gallant a comrade.—*Ibid October 23.*

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Miscellany.—Lord Reading was entertained at a banquet given by the New York Bar Association on October 14. He received an ovation from the gathering, which included all the prominent lawyers in the State of New York. Lord Reading, in the course of his speech, said that the duty of the law was to secure justice. 'The idea that it is the duty of the law courts to dispense law is becoming obsolete,' he is reported to have said. 'It is recognised that the true duty of the courts is to dispense justice. I have been much impressed by the undesirability of recording decisions that do not involve new principles, but only apply old principles to new facts.'—

His Honour Judge Atherley-Jones, K.C., M. P., in addressing, as Recorder of Newcastle, the Grand Jury at the Michaelmas Quarter Sessions, expressed his pleasure at the appointment of the Town Clerk as Clerk of the Peace, and remarked that he understood that the duties of Public Prosecutor, which had hitherto been discharged by the Clerk of the Peace, would now be discharged by another gentleman. It would be wrong and inconsistent with the principles of the administration of justice that a person who was directly associated with the prosecution of criminals should share in any degree in the discharge of the judicial duties connected with the trial of those prisoners. It was a great mistake, although it was a very common one, for those associated in the administration of the law to speak in terms of

highest praise of the integrity of the Judicial Bench. The integrity was not due to the fact that they who performed those duties had a double dose of original righteousness, but it was really due to the excellence of our system and the vigilance with which the discharge of justice was scrutinised and supervised by the public and by the Press. In the days before that scrutiny and supervision were exercised, the greatest abuses were associated with the discharge of the duties of the Judicial Bench. In these days of stress and storm there was no question that they who were concerned with the administration of justice should take the uttermost care that the liberty of the subject should not be rashly or wantonly interfered with by the executive. Owing to the present condition of affairs, and inevitably in some cases, there had been some confusion between the discharge of judicial and executive duties. He for one entertained no fear that any injury was likely to ensue to the country by our maintaining inviolable the principles of British justice—fair and open trial.—*Ibid.*

CONTEMPORARY LEGAL LITERATURE.

"The cunning livery" is the heading of an article of interest in the *American Law Review* for September-October, in which the history of the exceptions engrafted on the doctrine of *caveat emptor* is dealt with. The writer shows how in the beginning there was an action only if there was a lie warranted but how gradually an action came to be recognised for all lies and how finally an action is now maintainable on any affirmation provided a contract is intended. It may be an indication of the growing degeneracy of the times or it may be an indication of greater truthfulness and trustfulness. In assessing damages, for breach of warranty, American Courts seem to be divided into two schools. One school allows only the amount of loss, that is to say the difference between the price paid and the actual value of the goods sold while the other school allows the difference between the actual value and the value that the goods would have realised if the affirmation was made good.

In another article, the extent to which the pardoning power is vested in the executive, the legislature and the judiciary in the United States of America is discussed. The power vested in the King in England is vested in America in the Presidents and the Governors though properly speaking, it must vest in the people. Properly speaking "pardon" is neither a legislative, nor a judicial but an exe-

cutive function. But the legislatures have undoubtedly power to pardon not only individuals, but also issue general pardons, though the federal legislature as a legislature of limited powers may not possess that power. As instances of the judiciary power of pardon are given power to stay execution of sentence temporarily pending appeal for instance, indefinitely as when the Court finds the verdict unsatisfactory. There is a conflict of opinion in America as to the constitutionality of the exercise of this power. The indefinite suspension of sentence is another way in which the judiciary exercises the power. This power is more largely recognised in America than the power of staying execution indefinitely. Certain statutes have conferred upon the Courts, power to suspend or remit sentence on good behaviour. Courts are also recognised to possess the power to remit fines, etc., in cases of contempt of Court. Prison authorities are also given certain powers under statutes to discharge prisoners on good behaviour.

Lawyers have always dominated American political life—to give one instance, 22 out of the twenty-seven presidents of the United States of America have been lawyers. The writer of the article headed "lawyer and democracy" regrets that the lawyers are not keeping pace with the times and instead of being on the side of progress, are too much attached to the past and wholly unable to throw themselves into the future. He traces this defect to the lawyer's method of the study of case law. The lawyer is unable, he says, to reconcile himself with the recognition of the rights of the State against private property. He exhorts lawyers to take their inspiration from the great lawyers who signed the Declaration of Independence.

Mr. Norman Bentwich discusses the extent to which recognitionis given to Jewish Law in private international jurisprudence. It varies from the complete adoption of it in the orient to govern all the personal relations of native Jews to the bare admission of it in France as a system chosen by certain foreign countries to regulate the conditions of marriage in Europe. In England, Jewish law is recognised to the extent that Jewish form of marriage is an accepted form of marriage for Jews, but the capacity of the parties to the marriage is to be wholly determined by reference to English Law. Russia and Austria entrust the question of personal status largely to the Rabbis and recognise their decrees of divorce while England does not recognise any system of divorce other than that

allowed by the Act of 1857. This works a hardship on Jews domiciled and married in Russia or Austria and since settled in England, the grounds on which divorce is allowed under the Rabbinical law being much wider than those under the English Law of divorce.

Though choses in action have properly speaking no locality, for certain limited purposes they are treated as having a locality. A writer in the *Canadian Law Times* for September, deals with this question at some length. The *locality* may vary according to the purpose for which it is sought to be determined. It may have one locality for enforcing or administering it, or another to determine rights of succession and quite a third one for purposes of income-tax. The case of *specialty* debts seems to stand under the English Law on a special footing, the specialty being supposed to be wherever the bond is to be found.

Another writer in the same journal considers the question whether in an action on contract, damages for injured feelings, indignities, etc., can be had. He thinks on the authority of *Addis* v. *Gramophone Company* [1] that under the English law it cannot; though in a recent case in New York in which an action was brought against the Cunard Company by a lady passenger on board a steamer of the company for damages for indignities suffered by her at the hands of the examining ship's doctor, the Court held that the only question in such cases was whether the damages were too remote and they held that in that particular case, it could not be held too remote. The writer controverts this position and argues that the ground on which English law generally disallows damages for injured feelings is not *remoteness* of the damage but the impossibility of valuing the damage in terms of money.

We welcome the new Journal, "The Legal Miscellany and Review" from Calcutta. "Are laws judicially noticed." "Fraud, its effect on contracts and judicial proceedings." "Crime and criminal law—a comparative study" are some of the interesting articles in the issue of this Journal for September.

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1. L. R. (1909) A. C. 488.